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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,911	01/30/2004	Frederic Sgier	09955.0025-00000	4613
22852	7590	01/20/2010		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER WAGGLE, JR, LARRY E	
			ART UNIT	PAPER NUMBER
			3775	
			MAIL DATE	DELIVERY MODE
			01/20/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/766,911

Applicant(s)

SGIER ET AL.

Examiner

Larry E. Waggle, Jr

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22, 24 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24, 36-40 and 122 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 1, as disclosed on page 4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 11-18, 22, 24, 36-39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vignaud et al. (US Patent 5176680) in view of Martin et al. (US Patent 5368594) further in view of Goudfrooy (US Patent 4299212).

Vignaud et al. disclose a vertebral arthrodesis device comprising at least one pin (6); at least one ring (9) having a through hole, an inside diameter, and an outer surface (10) having a substantially spherical shape; and at least one screw (1) including a head (4) that delimits a cavity (i.e. between 4a and 4b) and a cap (7) including lateral recesses (16), wherein the cavity includes an inner surface (12) having a partially spherical contour bordered on either side by a lateral recess (15) to permit angular adjustment of the at least one pin in the sagittal plane; and at least one cap having an aperture to provide angular clearance to the at least one pin in multiple planes (Figures 1-6 and column 1, line 65 – column 3, line 9).

Vignaud et al. disclose the claimed invention except for the cavity receiving the at least one ring with snap-on installation and the head further including at least two lateral threaded holes, a cap overlapping the at least one ring having at least two threaded holes aligning with the at least two lateral threaded holes of the head and at least two threaded tightening members including first and second lateral recesses. Martin et al. teach a bone screw (5) having a head that is shaped so that a cavity (11) receives a pin

(3) via a snap-on (i.e. clipping) connection (via the shape of the head and the slots (13) provided for flexibility) and includes two lateral walls (16) including threaded holes (15) that receive tightening members (14) that secure a cap (12) with a conically shaped aperture (i.e. between 12a and 12a) via two holes (Figure 2 and column 3, line 63 – column 4, line 6). It would have been obvious to a person having ordinary skill in that art at the time of the invention to construct the invention of Vignaud et al. with the bone screw having a head that is shaped so that a cavity receives a pin via a snap-on connection and includes two lateral walls including threaded holes that receive tightening members that secure a cap with a conically shaped aperture via two holes in view of Martin et al. in order to a grip between the pin and the head sufficient to temporarily immobilize the pins without permanently locking them in place.

Vignaud et al. in view of Martin et al. disclose the claimed invention except for the lateral recesses of the head and the cap being shaped to allow for angular adjustment in multiple planes. Goudfrooy teaches an immobilization device comprising a head (8) comprising a cavity (12) with a partially spherical contour bordered on either side by lateral hollow sphere shaped recesses (13) and a cap (7) comprising a cavity (10) with a partially spherical contour bordered on either side by lateral hollow sphere shaped recesses (11) (Figures 1-3 and column 2, line 30 - column 4, line 40). It would have been obvious to a person having ordinary skill in that art at the time of the invention to construct the invention of Vignaud et al. in view of Martin et al. with the immobilization device comprising a head comprising a cavity with a partially spherical contour bordered on either side by lateral hollow sphere shaped recesses and a cap comprising a cavity

with a partially spherical contour bordered on either side by lateral hollow sphere shaped recesses in view of Goudfrooy in order to allow for angular adjustment of the pin in all directions (i.e. multiple planes) relative to the location of the vertebrae.

Claims 8-10 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vignaud et al. (US Patent 5176680) in view of Martin et al. (US Patent 5368594) further in view of Goudfrooy (US Patent 4299212) and further in view of Schlapfer et al. (US Patent 5501684).

Vignaud et al. in view of Martin et al. further in view of Goudfrooy disclose the claimed invention except for the at least one ring including a plurality of slots distributed on its periphery, wherein the slots of the at least one ring extend between the outer surface of the ring and the inside diameter of the ring, each of the slots of the at least one ring open at one of the longitudinal openings, and each adjacent slot opens at the opposite longitudinal opening. Schlapfer et al. teach the use of a ring (2) including a plurality of slots (24), wherein the slots alternate from opening to one longitudinal opening to opening to an opposing longitudinal opening (Figure 2 and column 4, line 41, column 5, line 2). It would have been obvious to a person having ordinary skill in that art at the time of the invention to construct the invention of Vignaud et al. in view of Martin et al. further in view of Goudfrooy with the use of a ring including a plurality of slots, wherein the slots alternate from opening to one longitudinal opening to opening to an opposing longitudinal opening in view of Schlapfer et al. in order to allow greater flexibility of the ring while maintaining structural integrity.

Response to Arguments

Applicant's arguments, see pages 2-6, filed 28 September 2009, with respect to the rejection(s) of claim(s) 1-22, 24 and 36-40 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Vignaud et al., Martin et al., Goudfrooy (US Patent 4299212) and Schlapfer et al. (US Patent 5501684).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Larry E. Waggle, Jr whose telephone number is 571-270-7110. The examiner can normally be reached on Monday through Thursday, 6:30am to 5pm, EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Larry E Waggle, Jr/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775